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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 UNITED STATES OF AMERICA,

9 Plaintiff,

10 v.

11 JAMAAL JOHNATHAN BOMBER,

12 Defendant.

CR13-187 TSZ

ORDER

13 THIS MATTER comes before the Court on defendant Jamaal Johnathan Bomber's
14 motion to withdraw guilty plea, docket no. 62. Having reviewed all papers filed in
15 support of, and in opposition to, defendant's motion, the Court enters the following order.

16 **Discussion**

17 A defendant may withdraw a guilty plea after the plea is accepted by the Court,
18 but before sentencing, if the defendant "can show a fair and just reason for requesting the
19 withdrawal." Fed. R. Crim. P. 11(d)(2)(B); *see United States v. Ruiz*, 257 F.3d 1030 (9th
20 Cir. 2001) (en banc). The "fair and just" standard is generous and must be applied
21 liberally, but a defendant may not withdraw a guilty plea "simply on a lark." *United*
22 *States v. McTiernan*, 546 F.3d 1160, 1167 (9th Cir. 2008) (citing *United States v. Hyde*,

1 520 U.S. 670, 676-77 (1997)). “Fair and just” grounds for withdrawing a guilty plea
2 include inadequate Rule 11 plea colloquies, newly discovered evidence, intervening
3 circumstances, other reasons that did not exist when the defendant entered the plea, and
4 erroneous or inadequate legal advice. *Id.* at 1167.

5 The Court is persuaded that Jamaal Bomber has not proffered a “fair and just”
6 basis for withdrawing his guilty plea. In his motion, Bomber has not identified any
7 deficiencies in the plea colloquy, any newly discovered evidence or intervening
8 circumstance, or any ineffectiveness of counsel. Instead, Bomber relies primarily on
9 materials relating to a state court criminal matter being dismissed as a result of his plea,
10 which were provided to him almost a month before the Court accepted his plea. Bomber
11 fails to indicate whether these materials are in any way exculpatory, and he does not
12 explain how or why these materials caused him to want to withdraw his guilty plea.

13 Bomber also contends that he should be allowed to withdraw his plea because he
14 indicated a desire to do so to his prior counsel before the Court accepted his plea. In
15 support of this assertion, however, Bomber has offered no declaration or other evidence
16 concerning the sequence of events or the substance of discussions that he had with prior
17 counsel, namely Peter Avenia and Corey Endo. The only information in the record
18 relating to this subject is contained in Corey Endo’s sealed declaration filed in support of
19 a motion to withdraw as counsel. The declaration indicates that, after receiving the
20 materials relating to the state court proceedings, Bomber “became convinced that he
21 should not have accepted the government’s plea offer,” and that Bomber “has now
22 indicated that he wants to file a motion to withdraw his guilty plea.” Endo Decl. at ¶¶ 6
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1 & 7 (docket no. 55) (emphasis added). The declaration was dated November 7, 2013,
2 which was over three weeks after the Court accepted Bomber's plea. See Order of
3 Acceptance of Plea of Guilty entered October 15, 2013 (docket no. 52).

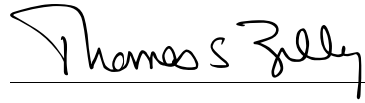
4 Neither the declaration nor anything else before the Court suggests that Bomber
5 made his wish to withdraw his plea known to prior counsel earlier than October 15, 2013.
6 Moreover, in his motion, Bomber does not allege that prior counsel was ineffective in not
7 filing a motion to withdraw the guilty plea before the Court accepted it. To the contrary,
8 Bomber's motion indicates that prior counsel "cannot be faulted for displaying concern
9 about the perceived adverse effect of a guilty plea withdrawal and endeavoring to prevent
10 the withdrawal." Motion at 4 (docket no. 62). Finally, Bomber provides no authority for
11 the proposition that his ability pursuant to Rule 11(d)(1) to withdraw the plea for "any
12 reason or no reason" before it was accepted by the Court constitutes a "fair and just"
13 ground for withdrawing the plea, now that it has been accepted by the Court. Such
14 reasoning renders meaningless the distinction drawn in Rule 11(d) between withdrawal
15 motions made before and after acceptance of a guilty plea, and the Court declines to
16 adopt it.

17 Conclusion

18 Jamaal Johnathan Bomber's motion to withdraw guilty plea is not founded on the
19 requisite "fair and just" reason, but rather perhaps on the equivalent of "buyer's
20 remorse," and the motion, docket no. 62, is DENIED. **Sentencing is SCHEDULED for**
21 **April 3, 2014, at 1:30 p.m.** The Clerk is DIRECTED to send a copy of this Order to all
22 counsel of record.
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1 IT IS SO ORDERED.

2 Dated this 19th day of February, 2014.

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4 THOMAS S. ZILLY
5 United States District Judge
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